IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03/03/2004

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THE HONOURABLE MR.JUSTICE A.KULASEKARAN

W.P. No. 103 of 2004
and
W.P.M.P.No. 106 of 2004
W.V.M.P. No. 27 of 2004

-Vs-

K. Manoharan
Chief Manager (Finance &
Administration)
Central Institute of Plastics
Engineering & Technology
Guindy, Chennai - 32 ... Petitioner

-Vs-

1. The Director General
Central Institute of Plastics
Engineering & Technology
Guindy, Chennai - 32

2. The President
CIPET Governing Council
& Secretary to Government
of India
Department of Chemicals and
Petrochemicals
Ministry of Chemicals and
Fertilizers
Shastri Bhavan
New Delhi - 110 001 ...Respondents

For Petitioner : Mr. M. Jayaraman

For Respondents : Mr. A.L. Somajaji, Senior Counsel
assisted by Mr. V. Perumal

Petition under Article 226 of The Constitution of India, praying for issuance of a writ of Certiorari, as stated therein.

:ORDER

By consent of counsel for both sides, the writ petition itself is taken up for final disposal.

2. This writ petition has been filed challenging the order of transfer dated 31-12-2003 passed by the first respondent, transferring the petitioner from the post of Chief Manager (Finance & Administration) of Central Institute of Plastics Engineering & Technology, (CIPET is a registered institute under the Ministry of Chemicals and Fertilizers) Corporate Office, Chennai to CIPET Centre, Amritsar as Chief Manager (Project).

3. The case of the petitioner is that he has applied for the post of Deputy Director (P&A), but the selection process could not be completed by the authority, who was holding additional charge of the post of Director General of CIPET for want of time. The person holding the office of the first respondent was appointed as Director General in October 2001, but he did not proceed to fill up the post of Deputy Director since he did not like the petitioner. Due to personal animosity, the petitioner was transferred as Chief Manager (Project) to Amritsar, which is purely a technical post for which he is not qualified. There is no common seniority between technical and non-technical personnel and no vacancy of Chief Manager (Project) at Amritsar Centre, CIPET. The first respondent is not empowered to create or redesignate the post on his own, but he has done it by way of the impugned order. The post of Chief Manager (Project) at Amritsar Centre, CIPET is purely a technical one. The first respondent had attempted to avail loan from outside agency contrary to the Memorandum of Association and Regulations of CIPET and the petitioner has brought the same to the notice of the first respondent that relevant Rules and Regulations contemplate advise of the financial advisors to be taken in finance matters like availing loan etc., and put up a dissent note on 11-08-20 03. It is also stated that the petitioner had put up a note on 11-08 -2003 for initiation of disciplinary proceedings against one Cashier, but no action taken. The impugned order has been issued to take vengeance against the petitioner. It is also canvassed that the first respondent is not a competent person to pass the impugned order. Further, it is added by the petitioner that his children are studying in various institutions at Madras and other domestic reasons and the impugned order has been passed only to victimise the petitioner. In and by the impugned order, he was demoted.

4. The case of the respondents is that as per Administrative Manual (Annexure II) the cadre controlling authority is the Director General. The cadre will be subject to additions and alterations, as may be made from time to time at the discretion of the Director General. As per the annexure III of Administrative Manual, the competent authority for taking disciplinary action against the Deputy Director / Branch Head / Chief Manager (P&A) is the Director General and the appellate authority is the Chairman (President of the Governing Council). The petitioner is the Chief Manager, hence the competent authority is the first respondent and the appellate authority is the second respondent. As against the order of transfer, an appeal remedy is provided before the second respondent which was not opted by the petitioner, hence the writ petition is not maintainable. In Annexure IV of Administrative Manual,

under the delegated power - Serial No.12, the Director General is the controlling officer for himself and all personnel under his control. Under clause 13, the Director General has full powers of allocation of functions and duties to the staff under his administrative control. The averment that CIPET has two wings namely technical and non-technical is incorrect. It is also incorrect to state that the Chief Manager (P&A) post is available only at the Corporate Office, Chennai. As per the Organogram of CIPET Corporate approved by the Government of India, Annexure VIII, there is only one sanctioned post of Deputy Director. The claim of the petitioner that he is the Head of the Finance and Administrative Department of nontechnical wing of CIPET and comes next to the Director is false. The petitioner has been transferred in the interest of the organisation, to improve the performance of CIPET, Amritsar and to look after the additional activities of construction of incomplete hostels etc., since the Chief Manager of the Amritsar Centre could focus only on technical matters and administrative matters are not being given enough attention. As per the rules and regulations of CIPET, as approved by the Government of India, Rule 52 empowers the Director General to prescribe duties of all officers and staff of the Society and shall exercise supervision and disciplinary control as may be necessary in accordance with these Rules. Subject to these Rules, the Director General shall, in all matters under his charge has power similar to in case of Head of Department (HOD). In addition to that, the Governing Council may also delegate additional powers to the Director General, if it is considered necessary from time to time. There is no single incident where the Rules and Regulations have been violated. In the present trnasfer order, the petitioner is transfered as Chief Manager (Project), Amritsar Centre, CIPET as against the post of Deputy Director. The Chief Manager (Technical) of Amritsar has been directed to report to Chief Manager (Project) as such it is not correct that there is no vacancy of Chief Manager at Amritsar Centre. It has been the precedent that non-technical officers, who have the capabilities and potential were transferred and posted as Chief Manager (Project) at Patna, Bhuvaneswar and Mysore Centres, which were signed and issued by the petitioner himself. The petitioner never raised any objection, which is evident from the copy of the note received from ICICI Bank and noting of the first respondent and the petitioner. The post held by the Petitioner at Chennai Corporate Office and the post to be held at CIPET, Amritsar Centre remains the same as Chief Manager in the same scale of pay.

5. Mr. Jayaraman, learned counsel for the petitioner reiterated the contents contained in the affidavit and reply affidavit. The arguments advanced by Mr. Jayaraman is that the first respondent is not competent authority and there is no sanctioned vacancy of Chief Manager in Amritsar Centre and due to personal animosity, the impugned order was passed by the first respondent so as to victimise the petitioner.

6. The learned counsel for the petitioner relied on the decision reported in (Vice Chancellor, Lalit Narain Mithila University Vs. Dayanand Jha) AIR 1986 Supreme Court 1200. In that case, the Principal of College was transferred to the post of Reader in other college. The Honourable Supreme Court held that although the two posts - Principal and Reader carries the same scale of pay, the post of Principal undoubtedly has higher duties and responsibility. The post of Reader cannot therefore be regarded as equivalent

post as that of the post of Principal in the legal sense. The transfer order by the Vice Chancellor therefore held illegal.

7. Mr. Somayaji, learned Senior counsel appearing for the respondents submitted that the first respondent is a competent authority to pass the impugned order of transfer and if the petitioner has any grievance, he should have filed an appeal before the 2nd respondent. When alternative remedy is available, the writ petition is not maintainable. The learned Senior counsel also relied on some of the documents and demonstrated that the first respondent has not violated any of the Rules or Regulations.

8. The recruitment, promotion and terms and conditions of the services of CIPET employees are governed by the provisions contained in the Administrative Manual. Wherever CIPET rules are silent on any subject, the Central Government Rules made applicable as per the delegated Rules and Powers of the Governing Council to Director General/ Chief Executive of CIPET. 9. The Rules and Regulations of CIPET has been produced. Under Rule 14, the Governing Council, the President, the Director General and such other authorities, as may be constituted as such by the Governing Council are authorities of the Society as per the rank mentioned therein. Under Rule 15, the Director General shall be the Principal Executive Officer of the society. Under Rule 51, the functions and powers of Director General is defined. Under Rule 52, the Director General shall prescribe duties of all officers and staff of the society and shall exercise supervision and disciplinary control in accordance with these Rules. Subject to these Rules, the Director General shall, in all matters under his charge, have powers as similar to in the case of Head of Department (HOD). The Governing Council may also delegate additional powers to the Director to the extent considered necessary from time to time.

10. The delegation of powers to Director General, approved by GC also perused. Creation of permanent posts carrying maximum basic pay not exceeding Rs.20,000/- per month and creation of temporary posts upto and including the grade of Rs.16400-450-20000 can be done by the Director General as per the latest instruction of the Department of Expenditure and Department of Personnel & Training to be exercised by Government of India. Controlling officers for himself or personnel shall be exercised by the Director General. Similarly, allocations of functions and duties to the staff under his administrative control shall be done.

11. A joint reading of Rule 52 and delegation of powers to the Director General, approved by GC will make it clear that the first respondent is empowered and shall exercise the supervision and disciplinary control as may be necessary in accordance with these Rules. It is also seen in Rule 52 that the first respondent shall, in all matters under his charge have power as similar to Heads of Department (HOD), Government of India. In exercise of the said powers, the first respondent has passed the impugned order of transfer. Hence, the argument that the first respondent has no jurisdiction to pass the transfer order cannot be accepted.

12. The transfer is always construed as an incidence of service.

It is well accepted principle that transfer of an employee appointed to a particular cadre, transferable posts, from one place to another place is an incident of service and it does not affect or alter his terms of conditions of service. Indeed, the report on re-structuring CIPET Corporate office at Chennai, submitted by the Study Group in March 1999, constituted by the Government of India, in Clause 7.1.6 stated that all supervisory personnel in the Corporate office and in the extension centres shall be transferred within a period of three to five years between the corporate office and to the centres and viceversa.

13. It is not in dispute that the petitioner is employed in Chennai office for a period of about eight years, of course for a short while he was transferred to some other centre and re-transferred to Chennai. It is seen from the impugned order that one A.V.R. Krishna was currently working as Chief Manager (P/T) at Amritsar Centre, who was re-designated as Chief Manager (Technical) and he was sought to look after the entire technical activities, including design, tool room, processing, Cad/ Cam, testing and other technical services to plastics and other allied industries. The petitioner is posted as Chief Manager (Project) at Amritsar Centre and the subject assigned to him also mentioned in the impugned order as "over all functioning of General administration, Personnel, Finance etc., of CIPET Amritsar Centre". It is also mentioned therein that the said A.V.R. Krishna was directed to report to the petitioner for day-to-day activities. It is further stated in the impugned order that the petitioner is requested to handover the charges of his present assignment to one Subramaniam, Deputy Director (Corporate).

14. It is seen from the said arrangement that no new post has been created. It is also stated in the impugned order that the service conditions of the petitioner in no way affected nor his chance for promotion is curtailed. The petitioner has not placed any records to dispute the same.

15. A perusal of the impugned order shows that the same was passed due to imperative need of streamlining the functioning of CIPET. The first respondent, in exercise of his powers bonafide to meet the exigency of the administration has passed the impugned order.

16. In the decision reported in (Lakshmi Narayan Mehar Vs. Union of India and others) AIR 1997 SC 1347 the Honourable Supreme Court observed that the employee was posted near home town on compassionate grounds and later transferred on ground that service of experienced officers were necessary. The said order was passed due to administrative exigency and the Honourable Supreme Court refused to interfere with the said transfer.

17. Mr. Jayaraman, learned counsel appearing for the petitioner argued that the impugned order was passed on an extraneous consideration for achieving an align purpose and with an oblique motive. To make out a case of malafide, it is most essential to array the authority in his personal capacity and also to substantiate the same by placing positive evidence. In the case on hand, the petitioner has not proved both.

19. In the decision reported in (E.P. Rayappa Vs. State of Tamil

Nadu) AIR 1974 SC 555 the Honourable Supreme Court held that the allegations of malafides are often made more easily than proved. The very seriousness of such allegation demands proof of high order of credibility.

20. In (M. Sankaranarayanan, I.A.S., Vs. State of Karnataka and others) AIR 1993 SC 763, the Honourable Supreme Court observed that transfer of Chief Secretary, due to difference of opinion occurring between the Chief Secretary and the Chief Minister alleged. Such act does not warrant a finding that due to displeasure of Chief Minister, transfer is effected, but not on administrative exigency, but to malign the Chief Secretary. The position in this regard was also followed by the Honourable Supreme Court in the decision AIR 1974 SC 555 cited supra.

21. In the decision (B. Varadha Rao Vs. State of Karnataka and others) AIR 1974 SC 555, the Honourable Supreme Court held that when order of transfer not resulting in alteration of service condition to the disadvantage of the employee, such order does not even appellable. In the case on hand, The learned Senior counsel for the respondents argued that there is an alternative remedy which was not exhausted by the petitioner. Whereas, the petitioner no way aggrieved by it, hence it is not open to him to invoke the said alternative remedy. The issue is answered accordingly.

22. In (Union of India and others Vs. S.L. Abbas) AIR 1993 SC 2444 the Honourable Supreme Court held that transfer of an employee made without following guidelines cannot be interfered with by the Court unless, it is vitiated by malafides or is made in violation of the statutory provisions. While ordering transfer of Government employee, there is no doubt, the authority must keep in mind the guidelines issued by the Government on the subject, but the said guidelines do not confer upon the Government employee a legally enforceable right. It is also further held that who should be transferred and where is a matter for the proper authority to decide and unless the order of transfer is vitiated by malafides or is made in violation of statutory provisions, the Court cannot interfere with it.

23. In this case also, the allegations of malafide has been made by the petitioner but the same was not proved. The transfer has been effected by the first respondent on administrative exigency and it is for the first respondent to decide the way in which services of the petitioner can be utilised.

24. For the foregoing reasons, I do not find any illegality in the impugned order of transfer. Hence, the writ petition is dismissed. No costs. Consequently, connected WPMP and WVMP are closed.

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Index : Yes

Internet : Yes

To

1. The Director General Central Institute of Plastics Engineering & Technology Guindy, Chennai - 32

2. The President CIPET Governing Council & Secretary to Government of India Department of Chemicals and Petrochemicals Ministry of Chemicals and Fertilizers Shastri Bhavan New Delhi - 110 001